APPEAL NO. 040180
FILED MARCH 4, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on December 29, 2003. The hearing officer determined that the appellant's (claimant) compensable injury of _____, does not include the diagnosed conditions of thoracic outlet syndrome and brachial plexus entrapment. The claimant appealed the hearing officer's extent-of-injury determination based on sufficiency of the evidence grounds, and asserted that the hearing officer overlooked evidence from a medical doctor. The respondent (self-insured) responded urging affirmance, and asserted that the claimant did not "clearly and concisely rebut" the hearing officer's findings of fact and conclusions of law.

DECISION

Affirmed.

It is undisputed that the claimant, a diesel mechanic, sustained a compensable injury to his left arm on _____. The claimant testified that a "u-joint" shattered while he was removing it and that the metal fragments penetrated his left arm. The claimant underwent surgery to remove metal fragments from his left arm on February 6, 2002. The self-insured has accepted as a compensable injury punctures to the claimant's left forearm, a left wrist entrapment of the radial and ulna nerves, and a left elbow entrapment of the radial and median nerves. The claimant underwent three surgeries to repair his left radial nerve entrapment, left carpal tunnel entrapment at the median nerve, and a left ulna nerve entrapment on May 30, 2002. The claimant testified that he developed pain and swelling to his chest and left shoulder, and that his condition has worsened because the self-insured has denied his claim. The claimant contends that his compensable injury of _____, extends to and includes the diagnosed conditions of thoracic outlet syndrome and brachial plexus entrapment, and that the medical evidence supports his contention.

There was conflicting medical evidence. The hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence. Section 410.165(a). It is for the hearing officer to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness, including that of the claimant. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). The evidence supports the hearing officer's factual determinations. The hearing officer was persuaded by the medical reports that the claimant's compensable injury of

_____, does not include the diagnosed conditions of thoracic outlet syndrome and brachial plexus entrapment. The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, and we do not find them to be so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

With regard to the claimant's assertion that the hearing officer overlooked the testimony of Dr. R that helped him in a prior CCH, we note that Dr. R did not testify at the present CCH. A Decision and Order dated January 15, 2003, reflects that Dr. R testified at the prior CCH. In the present CCH, Dr. R's medical reports are in evidence and were considered by the hearing officer in determining the disputed issue. The Statement of the Evidence paragraph contains a brief statement that even though all of the evidence presented was not discussed, it was considered. The Appeals Panel stated that the 1989 Act does not require that the Decision and Order of the hearing officer include a statement of the evidence and that omitting some of the evidence from a statement of the evidence did not result in error. Texas Workers' Compensation Commission Appeal No. 000138, decided March 8, 2000, citing Texas Workers' Compensation Commission Appeal No. 94121, decided March 11, 1994. Accordingly, we believe that the hearing officer considered the medical evidence offered and admitted at the present CCH to determine the extent-of-injury issue. We perceive no error.

The self-insured contends in its response that the claimant did not specifically appeal certain of the hearing officer's findings of fact and conclusions of law. We disagree. The claimant has made it very clear that he is appealing the hearing officer's extent-of-injury determination and that he requests that the hearing officer's determination be overturned. We perceive no error.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

SUPERINTENDENT
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Margaret L. Turner
Appeals Judge

_____
Edward Vilano
Appeals Judge